SUPREME COURT OF THE UNITED STATES

No. 91–372

GEORGIA, PETITIONER *v.* THOMAS MCCOLLUM, WILLIAM JOSEPH MCCOLLUM AND ELLA HAMPTON MCCOLLUM

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

[June 18, 1992]

JUSTICE BLACKMUN delivered the opinion of the Court.

For more than a century, this Court consistently and repeatedly has reaffirmed that racial discrimination by the State in jury selection offends the Equal Protection Clause. See, *e.g.*, *Strauder* v. *West Virginia*, 100 U. S. 303 (1880). Last Term this Court held that racial discrimination in a civil litigant's exercise of peremptory challenges also violates the Equal Protection Clause. See *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. ___ (1991). Today, we are asked to decide whether the Constitution prohibits a *criminal defendant* from engaging in purposeful racial discrimination in the exercise of peremptory challenges.

On August 10, 1990, a grand jury sitting in Dougherty County, Ga., returned a six-count indictment charging respondents with aggravated assault and simple battery. See App. 2. The indictment alleged that respondents beat and assaulted Jerry and Myra Collins. Respondents are white; the alleged victims are African-Americans. Shortly after the events, a leaflet was widely distributed in the local African-American community reporting the assault and urging community residents not to patronize respondents' business.

Before jury selection began, the prosecution moved to prohibit respondents from exercising peremptory

challenges in a racially discriminatory manner. The State explained that it expected to show that the victims' race was a factor in the alleged assault. According to the State, counsel for respondents had indicated a clear intention to use peremptory strikes in a racially discriminatory manner, arguing that the circumstances of their case gave them the right to exclude African-American citizens from participating as jurors in the trial. Observing that 43 percent of the county's population is African-American, the State contended that, if a statistically representative panel is assembled for jury selection, 18 of the potential 42 jurors would be African-American.[1] With 20 peremptory challenges, respondents therefore would be able to remove all the African-American potential jurors.[2] Relying on *Batson* v. *Kentucky*, 476 U. S. 79 (1986), the Sixth Amendment, and the Georgia Constitution, the State sought an order providing that, if it succeeded in making out a prima facie case of racial discrimination by respondents, the latter would be required to articulate a racially neutral explanation for peremptory challenges.

The trial judge denied the State's motion, holding that "[n]either Georgia nor federal law prohibits criminal defendants from exercising peremptory strikes in a racially discriminatory manner." App. 14. The issue was certified for immediate appeal. *Id.*, at 15 and 18.

The Supreme Court of Georgia, by a 4–3 vote, affirmed the trial court's ruling. *State* v. *McCollum*, 261 Ga. 473, 405 S.E.2d 688 (1991). The court acknowledged that in *Edmonson* v. *Leesville Concrete Co.*, 500 U. S.___ (1991), this Court had found that the

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[1]Under Georgia law, the petit jury in a felony trial is selected from a panel of 42 persons. Ga. Code Ann. §15–12–160 (1990).

[2]When the defendant is indicted for an offense carrying a penalty of four or more years, Georgia law provides that he may "peremptorily challenge 20 of the jurors impaneled to try him." §15–12–165.

exercise of a peremptory challenge in a racially discriminatory manner "would constitute an impermissible injury" to the excluded juror. 261 Ga., at 473; 405 S.E.2d, at 689. The court noted, however, that *Edmonson* involved private civil litigants, not criminal defendants. "Bearing in mind the long history of jury trials as an essential element of the protection of human rights," the court "decline[d] to diminish the free exercise of peremptory strikes by a criminal defendant." *Ibid.* Three justices dissented, arguing that *Edmonson* and other decisions of this Court establish that racially based peremptory challenges by a criminal defendant violate the Constitution. 261 Ga., at 473; 405 S.E.2d, at 689 (Hunt, J.); *id.*, at 475; 405 S.E.2d, at 690 (Benham, J.); *id.*, at 479; 405 S.E.2d, at 693 (Fletcher, J.). A motion for reconsideration was denied. App. 60.

We granted certiorari to resolve a question left open by our prior cases—-whether the Constitution prohibits a criminal defendant from engaging in purposeful racial discrimination in the exercise of peremptory challenges.[3] ___ U. S. ___ (1991).

Over the last century, in an almost unbroken chain of decisions, this Court gradually has abolished race as a consideration for jury service. In *Strauder* v. *West Virginia*, 100 U. S. 303 (1880), the Court invalidated a state statute providing that only white men could serve as jurors. While stating that a defendant has no right to a "petit jury composed in whole or in part of persons of his own race," *id.*, at 305, the Court held that a defendant does have the right to be tried by a jury whose members are selected by nondiscriminatory criteria. See also *Neal* v. *Delaware*, 103 U.S. 370, 397 (1881); *Norris* v. *Alabama*, 294 U.S. 587, 599 (1935) (State cannot exclude African-Americans from jury venire on false assumption that they, as a group, are not qualified to serve as jurors).

In *Swain* v. *Alabama*, 380 U. S. 202 (1965), the Court was confronted with the question whether an African-American defendant was denied equal protection by the State's exercise of peremptory challenges to exclude members of his race from the

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[3]The Ninth Circuit recently has prohibited criminal defendants from exercising peremptory challenges on the basis of gender. *United States* v. *De Gross*, ___ F.2d ___ (1992) [1992 U.S. App. Lexis 5645] (April 2, 1992) (en banc). Although the panel decision now has been vacated by the granting of rehearing en banc, a Fifth Circuit panel has held that criminal defendants may not exercise peremptory strikes in a racially discriminatory manner. See *United States* v. *Greer*, 939 F.2d 1076 (CA5), reh. granted, 948 F.2d 934 (1991).

petit jury. *Id.*, at 209–210. Although the Court rejected the defendant's attempt to establish an equal protection claim premised solely on the pattern of jury strikes in his own case, it acknowledged that proof of systematic exclusion of African-Americans through the use of peremptories over a period of time might establish such a violation. *Id.*, at 224–228.

In *Batson* v. *Kentucky*, 476 U. S. 79 (1986), the Court discarded *Swain*'s evidentiary formulation. The *Batson* Court held that a defendant may establish a prima facie case of purposeful discrimination in selection of the petit jury based solely on the prosecutor's exercise of peremptory challenges at the defendant's trial. *Id.*, at 87. "Once the defendant makes a prima facie showing, the burden shifts to the State to come forward with a neutral explanation for challenging black jurors." *Id.*, at 97.[4]

Last Term this Court applied the *Batson* framework in two other contexts. In *Powers* v. *Ohio*, 499 U. S. ___ (1991), it held that in the trial of a white criminal defendant, a prosecutor is prohibited from excluding African-American jurors on the basis of race. In *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. ___ (1991), the Court decided that in a civil case, private litigants cannot exercise their peremptory strikes in a

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[4]The *Batson* majority specifically reserved the issue before us today. 476 U. S., at 89, n. 12. The two *Batson* dissenters, however, argued that the "clear and inescapable import" was that *Batson* would similarly limit defendants. *Id.*, at 125–126. Justice Marshall agreed, stating that "our criminal justice system `requires not only freedom from any bias against the accused, but also from any prejudice against his prosecution. Between him and the state the scales are to be evenly held.' *Hayes* v. *Missouri*, 120 U. S. 68, 70 (1887)." 476 U. S., at 107 (concurring opinion).

racially discriminatory manner.[5]

In deciding whether the Constitution prohibits criminal defendants from exercising racially discriminatory peremptory challenges, we must answer four questions. First, whether a criminal defendant's exercise of peremptory challenges in a racially discriminatory manner inflicts the harms addressed by *Batson*. Second, whether the exercise of peremptory challenges by a criminal defendant constitutes state action. Third, whether prosecutors have standing to raise this constitutional challenge. And fourth, whether the constitutional rights of a criminal defendant nonetheless preclude the extension of our precedents to this case.

The majority in *Powers* recognized that "*Batson* `was designed "to serve multiple ends,"' only one of which was to protect individual defendants from discrimination in the selection of jurors." 499 U. S., at ___ (slip op. 5). As in *Powers* and *Edmonson*, the extension of *Batson* in this context is designed to remedy the harm done to the "dignity of persons" and to the "integrity of the courts." *Powers*, at ___ (slip op. 1).

As long ago as *Strauder*, this Court recognized that denying a person participation in jury service on account of his race unconstitutionally discriminates against the excluded juror. 100 U.S., at 308. See also *Batson*, 476 U. S., at 87. While "[a]n individual juror does not have a right to sit on any particular petit jury, . . . he or she does possess the right not to be excluded from one on account of race." *Powers*, 499 U. S., at ___ (slip op. 9). Regardless of who invokes the discriminatory challenge, there can be no doubt

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[5]In his dissent in *Edmonson*, JUSTICE SCALIA stated that the effect of that decision logically must apply to defendants in criminal prosecutions. 500 U. S., at ___.

that the harm is the same—-in all cases, the juror is subjected to open and public racial discrimination.

But "the harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community." *Batson*, 476 U. S., at 87. One of the goals of our jury system is "to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair." *Powers*, 499 U. S., at ___ (slip op. 12). Selection procedures that purposefully exclude African-Americans from juries undermine that public confidence—as well they should. "The overt wrong, often apparent to the entire jury panel, casts doubt over the obligation of the parties, the jury, and indeed the court to adhere to the law throughout the trial of the cause." *Id.*, at ___ (slip op. 11–12). See generally Underwood, Ending Race Discrimination in Jury Selection: Whose Right Is It, Anyway?, 92 Colum. L. Rev. 725, 748–750 (1992).

The need for public confidence is especially high in cases involving race-related crimes. In such cases, emotions in the affected community will inevitably be heated and volatile. Public confidence in the integrity of the criminal justice system is essential for preserving community peace in trials involving race-related crimes. See Alschuler, The Supreme Court and the Jury: Voir Dire, Peremptory Challenges, and the Review of Jury Verdicts, 56 U.Chi. L. Rev. 153, 195–196 (1989) (describing two trials in Miami, Fla., in which all African-American jurors were peremptorily struck by white defendants accused of racial beating, and the public outrage and riots that followed the defendants' acquittal).

Be it at the hands of the State or the defense, if a court allows jurors to be excluded because of group bias, it is a willing participant in a scheme that could only undermine the very foundation of our system of justice—our citizens' confidence in it. Just as public

confidence in criminal justice is undermined by a conviction in a trial where racial discrimination has occurred in jury selection, so is public confidence undermined where a defendant, assisted by racially discriminatory peremptory strikes, obtains an acquittal.[6]

The fact that a defendant's use of discriminatory peremptory challenges harms the jurors and the community does not end our equal protection inquiry. Racial discrimination, although repugnant in all contexts, violates the Constitution only when it is attributable to state action. See *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 172 (1972). Thus, the second question that must be answered is whether a criminal defendant's exercise of a peremptory challenge constitutes state action for purposes of the Equal Protection Clause.

Until *Edmonson*, the cases decided by this Court that presented the problem of racially discriminatory peremptory challenges involved assertions of discrimination by a prosecutor, a quintessential state

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[6]The experience of many state jurisdictions has led to the recognition that a race-based peremptory challenge, regardless of who exercises it, harms not only the challenged juror, but the entire community. Acting pursuant to their state constitutions, state courts have ruled that criminal defendants have no greater license to violate the equal protection rights of prospective jurors than have prosecutors. See, *e.g.*, *State* v. *Levinson*, 71 Haw. 492, 795 P.2d 845 (1990); *People* v. *Kern*, 149 App. Div.2d 187, 545 N.Y.S.2d 4 (1989); *State* v. *Alvarado*, 221 N.J. Super. 324, 534 A.2d 440 (1987); *State* v. *Neil*, 457 So.2d 481 (Fla. 1984); *Commonwealth* v. *Soares*, 377 Mass. 461, 387 N.E.2d 499, cert. denied, 444 U. S. 881 (1979); *People* v. *Wheeler*, 22 Cal.3d 258, 583 P.2d 748 (1978).

actor. In *Edmonson*, by contrast, the contested peremptory challenges were exercised by a private defendant in a civil action. In order to determine whether state action was present in that setting, the Court in *Edmonson* used the analytical framework summarized in *Lugar* v. *Edmondson Oil Co.*, 457 U. S. 922 (1982).[7]

The first inquiry is "whether the claimed [constitutional] deprivation has resulted from the exercise of a right or privilege having its source in state authority." *Id.*, at 939. "There can be no question" that peremptory challenges satisfy this first requirement, as they "are permitted only when the government, by statute or decisional law, deems it appropriate to allow parties to exclude a given number of persons who otherwise would satisfy the requirements for service on the petit jury." *Edmonson*, 500 U. S., at ___ (slip op. 5). As in *Edmonson*, a Georgia defendant's right to exercise peremptory challenges and the scope of that right are established by a provision of state law. Ga. Code Ann. §15–12–165 (1990).

The second inquiry is whether the private party charged with the deprivation can be described as a state actor. See *Lugar*, 457 U. S., at 941–942. In resolving that issue, the Court in *Edmonson* found it useful to apply three principles: 1) "the extent to which the actor relies on governmental assistance and benefits"; 2) "whether the actor is performing a traditional governmental function"; and 3) "whether the injury caused is aggravated in a unique way by the incidents of governmental authority." 500 U. S., at ___ (slip op. 6–7).

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[7]The Court in *Lugar* held that a private litigant is appropriately characterized as a state actor when he ``jointly participates'' with state officials in securing the seizure of property in which the private party claims to have rights. 457 U. S., at 932–933, 941–942.

As to the first principle, the *Edmonson* Court found that the peremptory challenge system, as well as the jury system as a whole, "simply could not exist" without the "overt and significant participation of the government." *Id.*, at ___ (slip op. 7). Georgia provides for the compilation of jury lists by the board of jury commissioners in each county and establishes the general criteria for service and the sources for creating a pool of qualified jurors representing a fair cross section of the community. Ga. Code Ann. §15–12–40. State law further provides that jurors are to be selected by a specified process, §15–12–42; they are to be summoned to court under the authority of the State, §15–12–120; and they are to be paid an expense allowance by the State whether or not they serve on a jury, §15–12–9. At court, potential jurors are placed in panels in order to facilitate examination by counsel, §15–12–131; they are administered an oath, §15–12–132; they are questioned on voir dire to determine whether they are impartial, §15–12–164; and they are subject to challenge for cause, §15–12–163.

In light of these procedures, the defendant in a Georgia criminal case relies on "governmental assistance and benefits" that are equivalent to those found in the civil context in *Edmonson*. "By enforcing a discriminatory peremptory challenge, the Court `has ... elected to place its power, property and prestige behind the [alleged] discrimination.'" *Edmonson*, 500 U. S., at ___ (slip op. 9) (citation omitted).

In regard to the second principle, the Court in *Edmonson* found that peremptory challenges perform a traditional function of the government: "Their sole purpose is to permit litigants to assist the government in the selection of an impartial trier of fact] the selection of an impartial trier of fact." *Id.*, at ___ (slip op. 5). And, as the *Edmonson* Court recognized, the jury system in turn "performs the

critical governmental functions of guarding the rights of litigants and `insur[ing] continued acceptance of the laws by all of the people'" *Id.*, at ___ (slip op. 9) (citation omitted).] These same conclusions apply with even greater force in the criminal context because the selection of a jury in a criminal case fulfills a unique and constitutionally compelled governmental function. Compare *Duncan* v. *Louisiana*, 391 U. S. 145 (1968) (making Sixth Amendment applicable to States through Fourteenth Amendment) with *Minneapolis & St. L. R. Co.* v. *Bombolis*, 241 U.S. 211 (1916) (States do not have a constitutional obligation to provide a jury trial in civil cases). *Cf. West* v. *Atkins*, 487 U.S. 42, 53, n. 10, 57 (1988) (private physician hired by State to provide medical care to prisoners was state actor because doctor was hired to fulfill State's constitutional obligation to attend to necessary medical care of prison inmates). The State cannot avoid its constitutional responsibilities by delegating a public function to private parties. Cf. *Terry* v. *Adams*, 345 U.S. 461 (1953) (private political party's determination of qualifications for primary voters held to constitute state action).

Finally, the *Edmonson* Court indicated that the courtroom setting in which the peremptory challenge is exercised intensifies the harmful effects of the private litigant's discriminatory act and contributes to its characterization as state action. These concerns are equally present in the context of a criminal trial. Regardless of who precipitated the jurors' removal, the perception and the reality in a criminal trial will be that the court has excused jurors based on race, an outcome that will be attributed to the State.[8]

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[8]Indeed, it is common practice not to reveal the identity of the challenging party to the jurors and potential jurors, thus enhancing the perception that it is the court that has rejected them. See Underwood,

Respondents nonetheless contend that the adversarial relationship between the defendant and the prosecution negates the governmental character of the peremptory challenge. Respondents rely on *Polk County* v. *Dodson*, 454 U.S. 312 (1981), in which a defendant sued, under 42 U.S.C. §1983, the public defender who represented him. The defendant claimed that the public defender had violated his constitutional rights in failing to provide adequate representation. This Court determined that a public defender does not qualify as a state actor when engaged in his general representation of a criminal defendant.[9]

Polk County did not hold that the adversarial relationship of a public defender with the State precludes a finding of state action—it held that this adversarial relationship prevented the attorney's public employment from *alone* being sufficient to support a finding of state action. Instead, the determination whether a public defender is a state actor for a particular purpose depends on the nature and context of the function he is performing. For example, in *Branti* v. *Finkel*, 445 U.S. 507 (1980), this Court held that a public defender, in making personnel decisions on behalf of the State, is a state actor who must comply with constitutional requirements. And the *Dodson* Court itself noted, without deciding, that a public defender may act

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92 Colum. L. Rev., at 751, n. 117.

[9]Although *Polk County* determined whether or not the public defender's actions were under color of state law, as opposed to whether or not they constituted state action, this Court subsequently has held that the two inquiries are the same, see, *e.g.*, *Redell-Baker* v. *Kohn*, 457 U.S. 830, 838 (1982), and has specifically extended *Polk County*'s reasoning to state-action cases. See *Blum* v. *Yaretsky*, 457 U.S. 991, 1009, n. 20 (1982).

under color of state law while performing certain administrative, and possibly investigative, functions. See 454 U.S., at 325.

The exercise of a peremptory challenge differs significantly from other actions taken in support of a defendant's defense. In exercising a peremptory challenge, a criminal defendant is wielding the power to choose a quintessential governmental body—indeed, the institution of government on which our judicial system depends. Thus, as we held in *Edmonson*, when "a government confers on a private body the power to choose the government's employees or officials, the private body will be bound by the constitutional mandate of race neutrality." 500 U.S., at ___ (slip op. 10).

Lastly, the fact that a defendant exercises a peremptory challenge to further his interest in acquittal does not conflict with a finding of state action. Whenever a private actor's conduct is deemed "fairly attributable" to the government, it is likely that private motives will have animated the actor's decision. Indeed, in *Edmonson*, the Court recognized that the private party's exercise of peremptory challenges constituted state action, even though the motive underlying the exercise of the peremptory challenge may be to protect a private interest. See 500 U. S., at ___ (slip op. 11).[10]

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[10]Numerous commentators similarly have concluded that a defendant's exercise of peremptory challenges constitutes state action. See generally Alschuler, 56 Univ. of Chi. L. Rev., at 197–198; Chesney and Gallagher, State Action and the Peremptory Challenge: Evolution of the Court's Treatment and Implications for *Georgia* v. *McCollum*, 67 Notre Dame L. Rev. 1049, 1061–1074 (1992); Dunnigan, Discrimination by the Defense: Peremptory Challeges after *Batson* v. *Kentucky*, 88 Colum. L. Rev. 355, 358–361 (1988); Sullivan, The Prosecutor's Right to Object

Having held that a defendant's discriminatory exercise of a peremptory challenge is a violation of equal protection, we move to the question whether the State has standing to challenge a defendant's discriminatory use of peremptory challenges. In *Powers*, 499 U. S., at ___, this Court held that a white criminal defendant has standing to raise the equal protection rights of black jurors wrongfully excluded from jury service. While third-party standing is a limited exception, the *Powers* Court recognized that a litigant may raise a claim on behalf of a third party if the litigant can demonstrate that he has suffered a concrete injury, that he has a close relation to the third party, and that there exists some hindrance to the third party's ability to protect its own interests. *Id.*, at ___ (slip op. 10). In *Edmonson*, the Court applied the same analysis in deciding that civil litigants had standing to raise the equal protection rights of jurors excluded on the basis of their race.

In applying the first prong of its standing analysis, the *Powers* Court found that a criminal defendant suffered cognizable injury "because racial discrimination in the selection of jurors `casts doubt on the integrity of the judicial process,' and places the fairness of a criminal proceeding in doubt." *Id.*, at ___ (slip op. 11) (citation omitted). In *Edmonson*, this Court found that these harms were not limited to the criminal sphere. 500 U. S., at ___ (slip op. 15). Surely, a State suffers a similar injury when the fairness and integrity of its own judicial process is undermined.

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to a Defendant's Abuse of Peremptory Challenges, 93 Dick. L. Rev. 143, 158–162 (1988); Tanford, Racism in the Adversary System: The Defendant's Use of Peremptory Challenges, 63 S. Cal. L. Rev. 1015, 1027–1030 (1990); Underwood, 92 Colum. L. Rev., at 750–753.

In applying the second prong of its standing analysis, the *Powers* Court held that *voir dire* permits a defendant to "establish a relation, if not a bond of trust, with the jurors," a relation that "continues throughout the entire trial." 499 U. S., at ___ (slip op. 13). "Exclusion of a juror on the basis of race severs that relation in an invidious way." *Edmonson*, 500 U. S., at ___ (slip op. 14).

The State's relation to potential jurors in this case is closer than the relationships approved in *Powers* and *Edmonson*. As the representative of all its citizens, the State is the logical and proper party to assert the invasion of the constitutional rights of the excluded jurors in a criminal trial. Indeed, the Fourteenth Amendment forbids the State from denying persons within its jurisdiction the equal protection of the laws.

In applying the final prong of its standing analysis, the *Powers* Court recognized that, although individuals excluded from jury service on the basis of race have a right to bring suit on their own behalf, the "barriers to a suit by an excluded juror are daunting." 499 U. S., at ___ (slip op. 14). See also *Edmonson*, 500 U. S., at ___ (slip op. 14). The barriers are no less formidable in this context. See Dunnigan, 88 Colum. L. Rev., at 367; Underwood, 92 Colum. L. Rev., at 757 (summarizing barriers to suit by excluded juror). Accordingly, we hold that the State has standing to assert the excluded jurors' rights.

The final question is whether the interests served by *Batson* must give way to the rights of a criminal defendant. As a preliminary matter, it is important to recall that peremptory challenges are not constitutionally protected fundamental rights; rather, they are but one state-created means to the constitutional end of an impartial jury and a fair trial. This Court repeatedly has stated that the right to a peremptory challenge may be withheld altogether without impairing the constitutional guarantee of an

impartial jury and a fair trial. See *Frazier* v. *United States*, 335 U. S. 497, 505, n. 11 (1948); *United States* v. *Wood*, 299 U. S. 123, 145 (1936); *Stilson* v. *United States*, 250 U. S. 583, 586 (1919); see also *Swain*, 380 U. S., at 219.

Yet in *Swain*, the Court reviewed the "very old credentials," *id.*, at 212, of the peremptory challenge and noted the "long and widely held belief that the peremptory challenge is a necessary part of trial by jury." *Id.*, at 219; see *id.*, at 212–219. This Court likewise has recognized that "the role of litigants in determining the jury's composition provides one reason for wide acceptance of the jury system and of its verdicts." *Edmonson*, 500 U. S., at ___ (slip op. 15).

We do not believe that this decision will undermine the contribution of the peremptory challenge to the administration of justice. Nonetheless, "if race stereotypes are the price for acceptance of a jury panel as fair," we reaffirm today that such a "price is too high to meet the standard of the Constitution." *Edmonson*, 500 U. S., at ___ (slip op. 15–16). Defense counsel is limited to "legitimate, lawful conduct." *Nix* v. *Whiteside*, 475 U. S. 157, 166 (1986) (defense counsel does not render ineffective assistance when he informs his client that he would disclose the client's perjury to the court and move to withdraw from representation). It is an affront to justice to argue that a fair trial includes the right to discriminate against a group of citizens based upon their race.

Nor does a prohibition of the exercise of discriminatory peremptory challenges violate a defendant's Sixth Amendment right to the effective assistance of counsel. Counsel can ordinarily explain the reasons for peremptory challenges without revealing anything about trial strategy or any confidential client communications. In the rare case in which the explanation for a challenges would entail

confidential communications or reveal trial strategy, an *in camera* discussion can be arranged. See *United States* v. *Zolin*, 491 U. S. 554 (1989); cf. *Batson*, 476 U. S., at 97 (expressing confidence that trial judges can develop procedures to implement the Court's holding). In any event, neither the Sixth Amendment right nor the attorney-client privilege gives a criminal defendant the right to carry out through counsel an unlawful course of conduct. See *Nix*, 475 U. S., at 166; *Zolin*, 491 U. S., at 562–563. See Swift, Defendants, Racism and the Peremptory Challenge, 22 Colum. Hum. Rts. L. Rev. 177, 207–208 (1991).

Lastly, a prohibition of the discriminatory exercise of peremptory challenges does not violate a defendant's Sixth Amendment right to a trial by an impartial jury. The goal of the Sixth Amendment is "jury impartiality with respect to both contestants." *Holland* v. *Illinois*, 493 U. S. 474, 483 (1990). See also *Hayes* v. *Missouri*, 120 U. S. 68 (1887).

We recognize, of course, that a defendant has the right to an impartial jury that can view him without racial animus, which so long has distorted our system of criminal justice. We have, accordingly, held that there should be a mechanism for removing those on the venire whom the defendant has specific reason to believe would be incapable of confronting and suppressing their racism. See *Ham* v. *South Carolina*, 409 U. S. 524, 526–527 (1973); *Rosales-Lopez* v. *United States*, 451 U. S. 182, 189–190 (1981) (plurality opinion of WHITE, J.). Cf. *Morgan* v. *Illinois*, ___ U.S. ___ (1992) (exclusion of juror in capital trial is permissible upon showing that juror is incapable of considering sentences other than death).

But there is a distinction between exercising a peremptory challenge to discriminate invidiously against jurors on account of race and exercising a peremptory challenge to remove an individual juror who harbors racial prejudice. This Court firmly has rejected the view that assumptions of partiality based

on race provide a legitimate basis for disqualifying a person as an impartial juror. As this Court stated just last Term in *Powers*, "[w]e may not accept as a defense to racial discrimination the very stereotype the law condemns." 499 U. S., at ___ (slip op. 9). "In our heterogeneous society policy as well as constitutional considerations militate against the divisive assumption—as a *per se* rule—that justice in a court of law may turn upon the pigmentation of skin, the accident of birth, or the choice of religion." *Ristaino* v. *Ross*, 424 U. S. 589, 596, n. 8 (1976). We therefore reaffirm today that the exercise of a peremptory challenge must not be based on either the race of the juror or the racial stereotypes held by the party.

We hold that the Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory challenges. Accordingly, if the State demonstrates a prima facie case of racial discrimination by the defendants, the defendants, must articulate a racially neutral explanation for peremptory challenges. The judgment of the Supreme Court of Georgia is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.